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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,050	10/19/2001	Kiartan Sandnes	SAND3002/REF/615	7334
7590	11/10/2003		EXAMINER	
Bacon & Thomas 625 Slaters Lane - 4th Floor Alexandria, VA 22314-1176			BHAT, NINA NMN	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/926,050	SANDNES ET AL.	
	Examiner	Art Unit	
	N. Bhat	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8-21-2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

### DETAILED ACTION

1. Claims 4, 11 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 4, 17 applicant recites the broad recitation of electromagnetic irradiation, and the claim also recites preferably microwave irradiation, which is the narrower statement of the range/limitation. In claim 11, applicant recites the broad range of storage protein, followed by "preferably gluten" which is the narrower range. Applicant is request to draft a dependent claim from the claim 7, 11 and 17, which recites the narrower range or limitation. Correction is required.

Art Unit: 1761

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-9, 11-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kossmann et al.

Kossmann et al. teach a method for making dry fish feed or shellfish feed based on fresh fish raw material, vegetable carbohydrate products with other additives. The dry feed contains 25-60% protein, 10-40% fat and 5-25% carbohydrate. The fat is in the form of fish oil. Specifically the vegetable is cooked and already pasted which is then admixed to fresh fish raw material with other additives such as minerals, vitamins and binding agents. The method further includes heating raw fish material to a temperature that pasteurization takes place and that the fish material is separated into at least two fractions, liquid and solid parts. The solid parts are dehydrated using conventional drying means such as an evaporator. The concentrated liquid fraction is mixed with fish oil and a predetermined amount of carbohydrate and heated to form a paste. The obtained mixture is then mixed with the semi-dried solids phase and the emulsified to provide a homogeneous mixture. The mixture has a dough consistency, which has water content of 20-30% and contains 25-32% oil bound in the dough. The dough can then be formed into soft pellets or semi-pellets by pressing through a disc, which gives pellets of a desired diameter and length. The formed pellets are thereafter dried to a water content of 6-10% at which there is obtained a storage stable feed product. The

Art Unit: 1761

formed pellets have a sufficient mechanical strength and keep their shape during transportation and handling and exhibit a sinking speed and the oil is not liberated during the feed since it is emulsified. [Note Column 2, lines 55-66, Column 3, lines 14-60, Column 4, lines 40 et seq.] The method and apparatus as taught by Kossman et al. fully anticipates applicant's claims as claimed.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6, 10, 14-15 and 17-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Kossman et al. in combination with Crews.

Kossman et al. as described above teach the invention substantially as claimed. Specifically a process of making fish food is described which uses raw whole fish or fish waste which is minced, then heated, the heat or pasteurized fish is then separated into at least two phases, a solids phase and liquid phase to which vegetables or carbohydrates are added as well as fish oil which is then heated and water is

evaporated. The mixture is then emulsified and admixed with the semi-dried solids, which is then made into pellets, which can be further dried and then comminuted into to smaller pieces depending upon the application. [Note the Figure and Column 4, line 40 et seq.]

However, Kossman et al. does not specify the type of drier used in drying the fish food. Kossman et al. does teach using an evaporator to evaporate the liquid from the liquid phase but does not teach specifically the type of drier used which would implicitly imply to the ordinary artisan familiar in making aquatic foods that the drying step is not critical and the type of drier used is an obvious expedient.

Crews teaches making flaked fish food from raw fish which is ground in a grinder, vitamins, preservatives and cold water is added to the ground fish to which the starches are added, the mixture is then pumped into a grinder emulsifier where the food is emulsified and then mixture heated and dried with a double drum dryer. [See figure and Column 3, lines 1-26]

It would have been obvious to one having ordinary skill in the art to provide a fish food which is made from raw fish for feed aquatic animals from the combined teachings of Kossman et al. and Crews because there is a specific teaching in both references to provide an aquatic food which uses raw fish, starches and fish oils which are emulsified and dried into either pellet or flake forms prepared such that the feed does not exhibit problems of density or separation when used in aquariums or aquatic arenas. With respect to applicant's proviso of the muscle fiber lengths this would be an obvious design choice and is dependent upon the grinder and grinding time when comminuting

Art Unit: 1761

the fish, the grinders described in both Kossman et al. and Crews would be capable of providing the muscle fiber lengths as described to comminute to a desired fiber length would have been obvious to one having ordinary skill in the art. With respect to the amount of gluten, this would have been obvious to one having ordinary skill in the art as Kossman et al. does teach adding vegetables the vegetables added to the feed which would include glutens although not specifically mentioned. Thus the combined teachings of Kossman et al. and Crews applicant's invention as a whole obvious to one having ordinary skill in the art at the time the invention was made.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Albrecht '354 and '356 teach a process for making a protein containing material, which is emulsified and heated. Stribling et al. teach a method of making and bait for crabs or lobsters. Kasaki et al. teach a feed for pisciculture enriched with isobutylidenediurea. Magnino, Jr. et al. teach a shaped set food article.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879.

The examiner can normally be reached on Monday-Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.



Application/Control Number: 09/926,050  
Art Unit: 1761

Page 7

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761

November 2, 2003

